

HOUSE BILL No. 1025

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-30-5-5; IC 14-15-8-8; IC 35-35-3-3; IC 35-38-1-21; IC 35-50-2-2; IC 35-50-6.

Synopsis: Operating while intoxicated causing death. Makes operating a motor vehicle or motorboat while intoxicated and causing the death of another person a Class B felony instead of a Class C felony. Prohibits a prosecuting attorney from entering into a plea agreement if the defendant has been charged with operating a motor vehicle or motorboat while intoxicated causing death. Allows a court to suspend only that part of a sentence that is in excess of the minimum sentence imposed on a person convicted of operating a motor vehicle or motorboat while intoxicated causing death. Specifies that a person imprisoned for operating a motor vehicle or motorboat while intoxicated causing death may not earn credit time for at least six years. Makes conforming amendments.

Effective: July 1, 2008.

Cheatham, Welch

January 8, 2008, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1025

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-30-5-5, AS AMENDED BY P.L.2-2005,
2 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 5. (a) A person who causes the death of another
4 person when operating a motor vehicle:

5 (1) with an alcohol concentration equivalent to at least
6 eight-hundredths (0.08) gram of alcohol per:

7 (A) one hundred (100) milliliters of the person's blood; or

8 (B) two hundred ten (210) liters of the person's breath;

9 (2) with a controlled substance listed in schedule I or II of
10 IC 35-48-2 or its metabolite in the person's blood; or

11 (3) while intoxicated;

12 commits a ~~Class C~~ **Class B** felony. ~~However, the offense is a Class B~~
13 felony if the person has a previous conviction of operating while
14 intoxicated within the five (5) years preceding the commission of the
15 offense; or if the person operated the motor vehicle when the person
16 knew that the person's driver's license, driving privilege, or permit is
17 suspended or revoked for a previous conviction for operating a vehicle



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1 while intoxicated.

2 (b) A person at least twenty-one (21) years of age who causes the
3 death of another person when operating a motor vehicle:

4 (1) with an alcohol concentration equivalent to at least
5 fifteen-hundredths (0.15) gram of alcohol per:

6 (A) one hundred (100) milliliters of the person's blood; or

7 (B) two hundred ten (210) liters of the person's breath; or

8 (2) with a controlled substance listed in schedule I or II of
9 IC 35-48-2 or its metabolite in the person's blood;

10 commits a Class B felony.

11 (c) (b) A person who violates subsection (a) or (b) commits a
12 separate offense for each person whose death is caused by the violation
13 of subsection (a). or (b):

14 (d) (c) It is a defense under subsection (a)(2) or subsection (b)(2)
15 that the accused person consumed the controlled substance under a
16 valid prescription or order of a practitioner (as defined in IC 35-48-1)
17 who acted in the course of the practitioner's professional practice.

18 SECTION 2. IC 14-15-8-8 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Except as
20 provided in subsections (b) and (c), a person who operates a motorboat:

21 (1) with an alcohol concentration equivalent (as defined in
22 IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol
23 per:

24 (A) one hundred (100) milliliters of the person's blood; or

25 (B) two hundred ten (210) liters of the person's breath; or

26 (2) while intoxicated;

27 commits a Class C misdemeanor.

28 (b) The offense is a Class D felony if:

29 (1) the person has a previous conviction under:

30 (A) IC 14-1-5 (repealed); or

31 (B) this chapter; or

32 (2) the offense results in serious bodily injury to another person.

33 (c) The offense is a ~~Class C~~ Class B felony if the offense results in
34 the death of another person.

35 SECTION 3. IC 35-35-3-3 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) A plea
37 agreement may not be made by the prosecuting attorney to a court
38 if the defendant has been charged with committing a Class B felony
39 under:

40 (1) IC 9-30-5-5 (operating a motor vehicle while intoxicated
41 causing death); or

42 (2) IC 14-15-8-8(c) (operating a motorboat while intoxicated

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causing death).

(b) No plea agreement may be made by the prosecuting attorney to a court on a felony charge except:

(1) in writing; and

(2) before the defendant enters a plea of guilty.

The plea agreement shall be shown as filed, and if its contents indicate that the prosecuting attorney anticipates that the defendant intends to enter a plea of guilty to a felony charge, the court shall order the presentence report required by IC 35-38-1-8 and may hear evidence on the plea agreement.

(c) Neither the content of the plea agreement, the presentence report, nor the hearing shall be a part of the official record of the case unless the court approves the plea agreement. If the plea agreement is not accepted, the court shall reject it before the case may be disposed of by trial or by guilty plea. If the court rejects the plea agreement, subsequent plea agreements may be filed with the court, subject to the same requirements that this chapter imposes upon the initial plea agreement.

(d) A plea agreement in a misdemeanor case may be submitted orally to the court.

(e) In a misdemeanor case, if:

(1) the court rejects a plea agreement; and

(2) the prosecuting attorney or the defendant files a written motion for change of judge within ten (10) days after the plea agreement is rejected;

the court shall grant the motion for change of judge and transfer the proceeding to a special judge under the Indiana Rules of Criminal Procedure. However, there may not be more than one (1) transfer of the proceeding to a special judge under this subsection.

(f) If the court accepts a plea agreement, it shall be bound by its terms.

SECTION 4. IC 35-38-1-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. (a) A court that receives a petition from the department of correction under IC 35-38-3-5 may, after notice to the prosecuting attorney of the judicial circuit in which the defendant's case originated, hold a hearing for the purpose of determining whether the offender named in the petition may be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

(b) Notwithstanding ~~IC 35-35-3-3(e)~~, **IC 35-35-3-3(f)**, and after a hearing held under this section, a sentencing court may order the

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offender named in the petition filed under IC 35-38-3-5 to be placed in home detention under IC 35-38-2.5 instead of commitment to the department of correction for the remainder of the offender's minimum sentence.

SECTION 5. IC 35-50-2-2, AS AMENDED BY P.L.216-2007, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A **felony** or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

(E) confinement (IC 35-42-3-3) with a deadly weapon;

(F) rape (IC 35-42-4-1) as a Class A felony;

(G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;

(H) except as provided in subsection (i), child molesting

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(IC 35-42-4-3) as a Class A **felony** or Class B felony, unless:

- (i) the felony committed was child molesting as a Class B felony;
- (ii) the victim was not less than twelve (12) years old at the time the offense was committed;
- (iii) the person is not more than four (4) years older than the victim, or more than five (5) years older than the victim if the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship);
- (iv) the person did not have a position of authority or substantial influence over the victim; and
- (v) the person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person;

(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;

(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;

(K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;

(L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;

(M) escape (IC 35-44-3-5) with a deadly weapon;

(N) rioting (IC 35-45-1-2) with a deadly weapon;

(O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver the methamphetamine pure or adulterated to a person under eighteen (18) years of age at

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least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(S) an offense under: ~~IC 9-30-5-5(b)~~

(i) IC 9-30-5-5 (operating a motor vehicle while intoxicated causing death); or

(ii) IC 14-15-8-8(c) (operating a motorboat while intoxicated causing death); or

(T) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or

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IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be suspended.

(i) If a person is:

(1) convicted of child molesting (IC 35-42-4-3) as a Class A felony against a victim less than twelve (12) years of age; and

(2) at least twenty-one (21) years of age;

the court may suspend only that part of the sentence that is in excess of thirty (30) years.

SECTION 6. IC 35-50-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **Except as provided in section 4.5 of this chapter**, a person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.

(b) A person may be reassigned to Class II or Class III if ~~he~~ **the person** violates any of the following:

(1) A rule of the department of correction.

(2) A rule of the penal facility in which ~~he~~ **the person** is imprisoned.

(3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, ~~he~~ **the person** must be granted a hearing to determine ~~his~~ **the person's** guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive ~~his~~ **the person's** right to the hearing.

(c) In connection with the hearing granted under subsection (b), the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak in ~~his~~ **the person's** own behalf;

(5) call witnesses and present evidence;

(6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;

(7) have the assistance of a lay advocate (the department may

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require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);

(8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;

(9) have immunity if ~~his~~ **the person's** testimony or any evidence derived from ~~his~~ **the person's** testimony is used in any criminal proceedings; and

(10) have ~~his~~ **the person's** record expunged of any reference to the charge if ~~he~~ **the person** is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(d) A person may be reassigned from Class III to Class I or Class II or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if ~~he~~ **the person** should be reassigned to a higher credit time class.

SECTION 7. IC 35-50-6-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 4.5. (a) A person imprisoned after being convicted of a Class B felony for violating IC 9-30-5-5 (operating a motor vehicle while intoxicated causing death) or IC 14-15-8-8(c) (operating a motorboat while intoxicated causing death) shall be initially assigned to Class III for:**

(1) six (6) years; or

(2) if the court sentenced the person to more than six (6) years, a period determined by the sentencing court;

whichever is greater.

(b) After the period of years determined under subsection (a) expires, the person may be reassigned to a different credit time class as provided in section 4(d) of this chapter.

SECTION 8. [EFFECTIVE JULY 1, 2008] **IC 9-30-5-5, IC 14-15-8-8, IC 35-35-3-3, IC 35-50-2-2, and IC 35-50-6-4, all as amended by this act, and IC 35-50-6-4.5, as added by this act, apply only to offenses committed after June 30, 2008.**

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